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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,968	01/10/2001	James P. Lambert	HIWIR 44961	9650
7590 06/29/2004			EXAMINER	
Edward G. Poplawski, Esq. Sidley & Austin 555 West Fifth Street Los Angeles, CA 90013-1010			PHAM, THOMAS K	
			ART UNIT	PAPER NUMBER
			2121	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/758,968	Applicant(s) LAMBERT, JAMES P.	
	Examiner Thomas K Pham	Art Unit 2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

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Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/30/01</u> <u>9/18/02</u> . | 6) <input type="checkbox"/> Other: _____ |

First Action on the Merits

1. Claims 1-36 of U.S. Application 09/758,968 filed on 01/10/2001 are presented for examination.

Quotations of U.S. Code Title 35

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim Rejections - 35 USC § 102

6. Claims 1-10, 13-22 and 25-34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,983,005 ("Monteiro").

Regarding claims 1, 13 and 25

Monteiro teaches providing information, comprising:

collecting at least two data segments, wherein each data segment is collected from a media stream, and wherein each media stream emanates from a different media source (col. 2 line 63 to col. 3 line 6, "The servers are interconnected ... paid commercial advertising"); and generating a composite media stream by joining together each of the collected data segments (col. 3 lines 7-11, "For each channel ... connected to the network").

Regarding claims 2, 14 and 26

Monteiro teaches transmitting the generated composite media stream to a user (col. 3 lines 12-19, "The Primary Servers forward ... in more detail below").

Regarding claims 3, 15 and 27

Monteiro teaches receiving a request for one of the media streams from the user, wherein the media stream is associated with one of the data segments (col. 3 lines 44-57, "The Administration Server ... how many turn it off"); and connecting the user to the media source that transmits the requested media stream (col. 3 lines 33-43, "Control Servers 50 are ... to the Media Servers").

Regarding claims 4, 16 and 28

Monteiro teaches each data segment is an audio data segment (col. 4 lines 12-14, "the information being delivered is high-quality audio").

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Regarding claims 5, 17 and 29

Monteiro teaches each data segment is comprised of both data and identification information (col. 17 lines 46-51, "The User selects a channel ... on the channel selected").

Regarding claims 6, 18 and 30

Monteiro teaches the identification information comprises multimedia information (col. 17 lines 56-64, "The information contained ... tour dates can be displayed").

Regarding claims 7, 19 and 31

Monteiro teaches each data segment has a fixed time duration (col. 5 lines 60-67, "The flow of information ... to a channel at any time").

Regarding claims 8, 20 and 32

Monteiro teaches collecting the data segment from a user-defined category of media streams (col. 15 lines 9-19, "At this point the User ... sends a PLAY command").

Regarding claims 9, 21 and 33

Monteiro teaches the media stream is a live media stream (col. 4 lines 6-11, "The distribution architecture ... to a large number of Users").

Claim Rejections - 35 USC § 103

7. Claims 10-12, 22-24 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monteiro in view of U.S. Patent No. 5,661,787 ("Pocock").

Regarding claims 10, 22 and 34

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Monteiro teaches the media stream but does not teach an archived media stream. However, Pocock teaches an audio archive description file (col. 4 lines 46-60, "Coordination of the audio ... of the tones and pulses") for the purpose of allowing the user to select a particular audio description of interest associated with the real-time audio program. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the archive audio file of Pocock with the live media stream of Monteiro because it would provide for the purpose of allowing the user to select a particular audio description of interest associated with the real-time audio program for more information on the music piece.

Regarding claims 11, 23 and 35

Pocock teaches collecting the data segments comprises: for each media source, fetching identification information about the media stream from a database (abstract); using the fetched identification information to locate the media stream (col. 4 lines 31-40, "automate the recording and storing ... each music piece broadcast"); collecting the data segment from the located media stream (col. 4 lines 40-45, "A receiver is tuned ... audio segment of the music piece"); affixing the identification information to the collected data segment (col. 4 lines 46-50, "Coordination of the audio ... at the same time"); and digitizing the data segment and the identification information (col. 4 lines 50-60, "Each station's program schedule ... combination of tones and pulses").

Regarding claims 12, 24 and 36

Pocock teaches maintaining each digitized data segment and identification information for a fixed time duration before switching to another data segment (col. 4 lines 40-45, "A receiver is tuned ... audio segment of the music piece").

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thomas Pham*; whose telephone number is (703) 305-7587 and fax number is (703) 746-8874, Monday-Thursday and every other Friday from 7:30AM- 5:00PM EST or contact Supervisor *Mr. Anthony Knight* at (703) 308-3179.

Any response to this office action should be mailed to: **Director of Patents and Trademarks Washington, D.C. 20231**, or **Hand-delivered** responses should be brought to **Crystal Park II, 2121 Crystal Drive Arlington, Virginia, (Receptionist located on the 4th floor)**, or fax to the **official fax number (703) 872- 9306**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Thomas Pham
Patent Examiner

TP

June 26, 2004


Anthony Knight
Supervisory Patent Examiner
Group 3600